

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
3 MARSHALL DIVISION

4 ATLAS GLOBAL TECHNOLOGIES, LLC, ( CAUSE NO. 2:21-CV-430-JRG  
5 Plaintiff, ( )  
6 vs. ( )  
7 TP-LINK TECHNOLOGIES CO., LTD., ( ) MARSHALL, TEXAS  
et al., ( SEPTEMBER 14, 2023  
Defendants. ) 8:30 A.M.

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8 VOLUME 5

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10 TRIAL ON THE MERITS

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11  
12 BEFORE THE HONORABLE RODNEY GILSTRAP  
13 UNITED STATES CHIEF DISTRICT JUDGE

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1                   THE COURT: Be seated, please.

2                   All right. Are the parties prepared to read into the  
3 record those items from the list of pre-admitted exhibits used  
4 during yesterday's portion of the trial?

5                   MS. FAIR: Yes, Your Honor.

6                   THE COURT: Please proceed.

7                   MS. FAIR: DX 21 is the only exhibit from yesterday.

8                   THE COURT: All right. Any objection to that  
9 rendition from the Defendants?

10                  MR. BELL: No objection.

11                  THE COURT: And I assume Defendants don't have  
12 anything further to offer of the same type?

13                  MR. BELL: No, Your Honor.

14                  THE COURT: All right. Thank you.

15                  Let me say a word to those of you in the gallery before  
16 we go further with my final instructions to the jury and the  
17 closing arguments from counsel.

18                  Two things: Number one, the Court considers its final  
19 instructions on the law and counsels' closing arguments as the  
20 most serious part of an inherently serious process.

21                  Accordingly, once I bring the jury in this morning, I don't  
22 want people leaning over and whispering to each other. I  
23 don't want you passing papers back and forth. I don't want  
24 you making noise of any kind. I don't want you coming and  
25 going. I don't want some paralegal with three boxes in her

1 arms walking through the back doors of the courtroom.

2 I want as much stillness and quiet as possible, and I  
3 want to avoid at all costs any disruptions or anything that  
4 would divert the jury's attention from what's about to happen.

5 Second of all, there are certain items of confidential  
6 information that have been an inherent part of this trial  
7 throughout the whole process. It is entirely likely that I am  
8 going to be asked to seal the courtroom during closing  
9 arguments.

10 If you're in the gallery and you're not subject to the  
11 protective order in this case and upon sealing of the  
12 courtroom you would have to get up and leave the courtroom, I  
13 want you to sit on the back two rows of the gallery. And if  
14 and when counsel for either party asks me to seal the  
15 courtroom, I want you to get up and move quickly to get in and  
16 out of the courtroom.

17 The lawyers that are presenting closing arguments have a  
18 defined and set amount of time, and I don't want to eat into  
19 their argument time because somebody is slow and forgot their  
20 device and have to come back and takes a lot of time to get in  
21 and out of the courtroom.

22 So before I bring the jury in, if you're going to be  
23 subject to having to leave the courtroom under my standing  
24 order on sealing to protect confidential information, sit on  
25 the back two rows of the gallery. And when that happens, move

1 expeditiously to get out of the courtroom so that it doesn't  
2 cause, A, a disruption or, B, a break in presentations from  
3 opposing counsel.

4 Any questions from anybody in the gallery about that? We  
5 haven't had any problems so far, but for heaven's sake  
6 double-check any devices you have to make sure that they are  
7 silent and that they don't ring or disrupt anything.

8 All right. Mr. Tribble, is the Plaintiff ready to  
9 proceed with final instructions to the jury and closing  
10 arguments?

11 MR. TRIBBLE: Plaintiff is ready, Your Honor.

12 THE COURT: Are Defendants ready, Mr. Reed, for  
13 final instructions to the jury and closing arguments?

14 MR. REED: Yes, they are, Your Honor.

15 THE COURT: All right. Let's bring in the jury,  
16 please.

17 (Whereupon, the jury entered the courtroom.)

18 THE COURT: Good morning, ladies and gentlemen.  
19 It's good to see you. Please have a seat. Thank you for  
20 being on time as you have throughout the trial.

21 Ladies and gentlemen of the jury, you've now heard all  
22 the evidence in this case, and I will now instruct you on the  
23 law that you must apply.

24 I want each of you to know that these instructions I'm  
25 about to give you orally have also been reduced to writing,

1 and I have seven printed copies of these final instructions in  
2 writing that I'm going to send back with you when you retire  
3 to the jury room to deliberate on your verdict, which means as  
4 a practical matter I'd much rather you listen to me as I give  
5 them to you orally and not feel compelled to take notes  
6 because you're going to have your own printed copy to review  
7 once you get to the jury room.

8 It's your duty to follow the law as I give it to you, but  
9 on the other hand, as I've said, you, the jury, are the sole  
10 judges of the facts in this case. Do not consider any  
11 statement that I have made over the course of the trial or may  
12 make in the course of these instructions as an indication that  
13 the Court has any opinion about the facts in this case.

14 Now, you are about to hear closing arguments from the  
15 attorneys for both of the competing parties. Statements and  
16 arguments of the attorneys, ladies and gentlemen, are not  
17 evidence, and they are not instructions on the law. Closing  
18 arguments by the attorneys are intended only to assist the  
19 jury in understanding the evidence and the parties'  
20 contentions.

21 A verdict form has been prepared for you, and you will  
22 take this verdict form with you to the jury room when I  
23 instruct you to consider, and when you've reached a unanimous  
24 agreement as to your verdict, you will notify the Court  
25 Security Officer and you will have your foreperson fill in the

1       blanks in the verdict form reflecting your unanimous answers  
2       to those questions.

3                  Do not decide who you think should win this case and then  
4       answer the questions to reach that result. Again, your  
5       answers and your verdict must be unanimous.

6                  Now, in determining whether any fact has been proven in  
7       this case, you may, unless otherwise instructed, consider the  
8       testimony of all the witnesses, regardless of who may have  
9       called them, and you may consider any stipulations or  
10      agreements of the parties. You may also consider all of the  
11      exhibits that have been received and admitted into evidence,  
12      regardless of who introduced them.

13                 As I've told you, and this is worth repeating, you, the  
14      jury, are the sole judges of the credibility of all the  
15      witnesses and the weight and effect to give to all the  
16      evidence. Now, in deciding the facts in this case, you may  
17      have to decide which testimony to believe and which testimony  
18      not to believe. You alone are to determine the questions of  
19      credibility or truthfulness of the witnesses.

20                 In weighing the testimony of the witnesses, you may  
21      consider a witness' manner and demeanor on the witness stand,  
22      any feelings or interest they may have in the case, any  
23      prejudice or bias that they may have about the case, and the  
24      consistency or inconsistency of their testimony, considered in  
25      the light of the circumstances.

1       Has the witness been contradicted by other evidence? Has  
2 he or she made statements at other times and in other places  
3 contrary to what they said on the witness stand? You, ladies  
4 and gentlemen, must give the testimony of each witness the  
5 amount of credibility and weight that you think it deserves.

6       You must also keep in mind that a simple mistake does not  
7 mean that a witness is not telling the truth. You must  
8 consider whether any misstatement was an intentional falsehood  
9 or a simple lapse in memory and what significance should be  
10 attached to that testimony.

11       As I've told you previously, the attorneys in this case  
12 are acting as advocates for their competing clients, and they  
13 have a duty to raise objections when they believe evidence  
14 being offered that should not be admitted under the rules of  
15 the Court.

16       When the Court sustained an objection to a question  
17 addressed to a witness, you must disregard that question  
18 entirely, and you may draw no inference from its wording or  
19 speculate or guess about what the witness would have said if  
20 the Court had allowed them to answer the question.

21       On the other hand, if the objection was overruled, then  
22 you must treat the answer to the question just as you would  
23 treat any other answer to any other question, that is, just as  
24 if the objection had not been made. Now, by allowing the  
25 testimony or other evidence to be introduced over the

1 objection of an attorney, the Court did not indicate any  
2 opinion as to the weight or the effect of that evidence.

3 Now, at various times during the course of the trial, it  
4 was necessary for the Court to talk to the lawyers outside of  
5 your hearing either here at the bench or by calling a recess  
6 and talking to them while you were outside of the courtroom.  
7 This happens because often during trials things arise that do  
8 not involve the jury. You should not guess or speculate,  
9 ladies and gentlemen, about what was said during such  
10 discussions that may have taken place outside of your  
11 presence.

12 Now, there are two types of evidence that you may  
13 properly consider in finding the truth as to the facts in this  
14 case. One is direct evidence, such as the testimony of an  
15 eyewitness. The other is indirect or circumstantial evidence,  
16 that is, the proof of a chain of circumstances that indicates  
17 the existence or non-existence of certain other facts. As a  
18 general rule, the law makes no distinction between direct  
19 evidence or indirect, that is, circumstantial evidence, but  
20 simply requires that you find the facts based on all the  
21 evidence presented.

22 Now, during the trial certain testimony has been  
23 presented to you through depositions. A deposition is the  
24 sworn recorded answers to questions asked to a witness in  
25 advance of the trial. If a witness cannot be physically

1 present to testify in person, then the witness' testimony may  
2 be presented under oath in the form of a deposition.

3 Before the trial began, the attorneys representing the  
4 parties in this case questioned these deposition witnesses  
5 under oath. At that time a court reporter was present and  
6 recorded their sworn testimony. Deposition testimony is  
7 entitled to the same consideration by you as testimony given  
8 by a witness in person from the witness stand in open court.  
9 Therefore, ladies and gentlemen, you should judge the  
10 credibility and importance of deposition testimony to the best  
11 of your ability just as if the witness had appeared in person  
12 before you in open court.

13 Now, while you should consider only the evidence in this  
14 case, you are permitted to draw such reasonable inferences  
15 from the testimony and exhibits as you feel are justified in  
16 the light of common experience. In other words, ladies and  
17 gentlemen, you may make deductions and reach conclusions that  
18 reason and common sense lead you to draw from the facts that  
19 have been established by the testimony and evidence in this  
20 case. However, you should not base your decision on any  
21 evidence not presented by the parties during the case,  
22 including your own personal experiences with any of the  
23 products that may be at issue here.

24 Now, unless I instruct you otherwise, you may properly  
25 determine that the testimony of a single witness is sufficient

1 to prove any fact, even if a greater number of witnesses may  
2 have testified to the contrary, if after considering all the  
3 evidence, you believe that single witness.

4 Also, when knowledge of a technical subject may be  
5 helpful to the jury, a person who has special training or  
6 experience in that technical field--we call them an expert  
7 witness--is permitted to state his or her opinions on those  
8 technical matters to the jury. However, ladies and gentlemen,  
9 you're not required to accept any of those opinions. As with  
10 any other witness, it is solely up to you to decide whether to  
11 rely or not rely on what's been presented to you.

12 Now, certain exhibits have been shown to you over the  
13 course of the trial that were illustrations. We call these  
14 types of exhibits demonstrative exhibits or simply  
15 demonstratives for short. Demonstrative exhibits are a  
16 party's depiction, picture, or model to describe something  
17 involved in the trial. If your recollection of the evidence  
18 differs from these demonstratives, you should rely on your  
19 recollection.

20 Demonstrative exhibits are sometimes called jury aids,  
21 and demonstrative exhibits themselves, ladies and gentlemen,  
22 are not evidence, but a witness' testimony concerning a  
23 demonstrative exhibit is evidence. Let me be clear.  
24 Demonstrative exhibits are not going to be available for you  
25 to view or consider during your deliberations.

1       Now, in any legal action, facts must be proven by a  
2 required amount of evidence, known as the burden of proof.  
3 The burden of proof in this case is on the Plaintiff for all  
4 the issues. It's burden of proof that you will apply in this  
5 case is the preponderance of the evidence standard which I've  
6 already discussed with you.

7       As you know, the Plaintiff in this case, Atlas Global  
8 Technologies, LLC, which you heard referred to simply as the  
9 Plaintiff or as Atlas, has the burden of proving patent  
10 infringement by a preponderance of the evidence. Atlas also  
11 has the burden of proving damages for any patent infringement  
12 by a preponderance of the evidence.

13       The two Defendants in this case, TP-Link Technologies  
14 Company, Ltd., and TP-Link Corporation, Ltd., which you've  
15 heard referred to throughout the trial together or  
16 collectively simply as TP-Link, they do not have any burden of  
17 proof in this case.

18       Now, the preponderance of the evidence standard, which  
19 we've already discussed, let me remind you, means evidence  
20 that persuades you, the jury, that a claim is more probably  
21 true than not true. Sometimes this is talked about as being  
22 the greater weight and degree of credible testimony.

23       Now, as I've previously told you, ladies and gentlemen,  
24 this burden of proof, the preponderance of the evidence  
25 standard, is not to be confused with any other burden of

1 proof, and it is certainly not to be confused with beyond a  
2 reasonable doubt, which is the burden of proof applied in a  
3 criminal case and which has no application here in a civil  
4 case. Beyond a reasonable doubt is a higher standard than the  
5 preponderance of the evidence.

6 Earlier in the case we talked about a standard of proof  
7 known as clear and convincing evidence. That also is a higher  
8 standard than the preponderance of the evidence. Again, the  
9 only burden of proof that applies in this case, which is a  
10 burden carried by the Plaintiff, is the preponderance of the  
11 evidence standard.

12 Now, in determining whether any fact has been proven by a  
13 preponderance of the evidence, you may, unless otherwise  
14 instructed, consider any agreements or stipulations between  
15 the parties, you may consider the testimony of all the  
16 witnesses regardless of who called them, and all the evidence,  
17 including all the exhibits received into evidence over the  
18 course of the trial, regardless of who may have produced or  
19 introduced them.

20 Now, as I did at the start of the case, I'll give you a  
21 summary of each side's contentions and I'll then provide you  
22 with detailed instructions on what each side must prove in  
23 order to win on its contentions. As.

24 I've previously told you, this is an action for patent  
25 infringement. The Plaintiff, Atlas, contends that TP-Link,

1 that is TP-Link Technologies and TP-Link Corporation, the two  
2 Defendants, infringe certain claims of the five  
3 patents-in-suit.

4 Remember, there are five patents-in-suit, which you've  
5 also heard referred to as the asserted patents. And these  
6 patents are United States Patent No. 9,532,187, which you've  
7 heard referred to throughout the trial as the '187 Patent;  
8 United States Patent No. 9,763,259, which you've heard  
9 referred to as the '259 Patent; United States Patent No.  
10 9,825,738, which you've heard referred to as the '738 Patent;  
11 and United States Patent No. 9,912,513, which you've heard  
12 referred to as the '513 Patent; as well as United States  
13 Patent No. 9,917,679, which you've heard referred to as the  
14 '679 Patent.

15 Now, the Plaintiff, Atlas, contends that the Defendants  
16 TP-Link, directly infringe claim 1 of the '513 Patent by  
17 offering for sale in the United States or importing into the  
18 United States products that Atlas argues are covered by this  
19 claim.

20 Atlas also argues that the TP-Link Defendants, that is  
21 TP-Link Technologies and TP-Link Corporation, have actively  
22 induced infringement of claims 4 and 12 of the '187 Patent;  
23 claims 1 and 18 of the '259 Patent; claim 1 of the '738  
24 Patent; claims 1 and 15 of the '513 Patent; and claims 1 and 6  
25 of the '679 Patent. These are the asserted claims which come

1 from the patents-in-suit.

2 These Defendants, TP-Link Technologies and TP-Link  
3 Corporation, deny that they infringe any of the asserted  
4 claims from the patents-in-suit. TP-Link -- and, again, when  
5 I say TP-Link, I mean both of these Defendants. TP-Link also  
6 denies that the Plaintiff Atlas is entitled to any money  
7 damages.

8 Now, if you decide that any asserted claim has been  
9 infringed, you will then need to decide the amount of money  
10 damages, if any, to be awarded to the Plaintiff to compensate  
11 it for that infringement.

12 At the beginning of the trial, I gave you some general  
13 information about patents and the patent system and a brief  
14 overview of the patent laws relevant to this case. I'll now  
15 give you more detailed instructions about the patent laws that  
16 relate to this case.

17 Before you can decide many of the issues in this case,  
18 you'll need to understand the role of the patent claims. The  
19 patent claims, ladies and gentlemen, are those numbered  
20 sentences at the end of a patent. The claims are important  
21 because it's the words of the claims that define what the  
22 patent covers.

23 The figures and the text in the rest of the patent  
24 provide a description and/or examples of the invention and  
25 they provide a context for the claims, but it is the claims

1 themselves that define the breadth of the patent's coverage.

2       Each claim is effectively treated as if it were a  
3 separate patent, and each claim may cover more or cover less  
4 than another claim. Therefore, what a patent covers depends,  
5 in turn, upon what each of its claims covers.

6       You will first need to understand what each claim covers  
7 in order to decide whether or not there is infringement of the  
8 claim. Now, the law says that it's my role to define the  
9 terms of the claims and it's your role to apply my definitions  
10 to the issues that you're asked to decide in this case.

11       Therefore, as I explained to you at the beginning of the  
12 case, I've already determined or construed the meanings of  
13 some of the language from the asserted claims, and I've  
14 provided these definitions or constructions to you in your  
15 juror notebooks. You must accept these definitions from the  
16 Court as to these words from the claims as being correct.  
17 It's your job to take these definitions that I have supplied  
18 and apply them to the issues that you are deciding, including  
19 the issue of infringement and damages.

20       Now, you should disregard any evidence presented at the  
21 trial that contradicts or is inconsistent with these  
22 constructions and definitions that the Court has given you.  
23 For claim limitations or language that I have not specifically  
24 construed--that is, language which I have not interpreted or  
25 defined--you're to use and apply the plain and ordinary

1 meaning of those elements or limitations as understood by one  
2 of ordinary skill in the art, which is to say, in the field of  
3 the technology of the patent, at the time of the alleged  
4 invention.

5 You have been provided with copies of the five asserted  
6 patents which are inside your juror notebooks and you may rely  
7 upon them and refer to them throughout your deliberations.

8 Now, several times in these instructions I've referred to  
9 or will refer to a person of ordinary skill in the field of  
10 the invention, or a person of ordinary skill in the art. The  
11 parties have agreed that a person of ordinary skill in the art  
12 here would have at least an undergraduate or a Bachelor of  
13 Science degree in electrical engineering, computer science, or  
14 computer engineering, or an equivalent field; knowledge of the  
15 IEEE 802.11 standard, including its MAC and PHY protocols; and  
16 at least two years of experience in the development of  
17 wireless local area networks, WLANs.

18 Now, the claims are intended to define in words the  
19 boundaries of the inventor's rights and only the claims of the  
20 patent can be infringed, ladies and gentlemen. Neither the  
21 written description nor the drawings or figures of a patent  
22 can be infringed. And each of the claims must be considered  
23 individually by the jury.

24 I will now explain to you how a claim defines what it  
25 covers.

1       A claim sets forth in words a set of requirements. Each  
2 claim sets forth its requirements in a single sentence. If a  
3 product or method satisfies each of these requirements, then  
4 it is covered by the claim. There can be several claims in a  
5 patent, and each claim may be narrower or broader than another  
6 claim by setting forth more or fewer requirements.

7       The coverage of a patent is assessed on a claim-by-claim  
8 basis. In patent law, the requirements of a claim are often  
9 referred to as the claim elements or the claim limitations.  
10 And when the product -- a product or method meets all of the  
11 requirements of a claim, the claim is said to cover that  
12 product or method, and that product or method is said to fall  
13 within the scope of that claim. In other words, a claim  
14 covers a product or method where each of the claim elements or  
15 limitations is present in that product or method.

16       If a product or a method is missing even one limitation  
17 or element of a claim, then the product or method is not  
18 covered by the claim. And if the product or method is not  
19 covered by the claim, the product or method cannot infringe  
20 the claim.

21       Now, the beginning portion or preamble of a claim often  
22 uses the word 'comprising'. The word 'comprising' when used  
23 in the preamble of a claim means including but not limited to,  
24 or containing but not limited to. And when comprising is used  
25 in a preamble, if you decide that the accused product includes

1 all the requirements of the claim, then the claim is  
2 infringed, and this is true even if the accused product  
3 contains additional elements.

4 Let me remind you of an example I gave you. If you  
5 consider a claim comprising a tabletop, legs, and glue, then  
6 that claim would be infringed by any table that includes a  
7 tabletop, legs, and glue, even if a table also contains other  
8 structures such as leaves to expand the size of the tabletop  
9 or wheels that would go on the ends of the legs.

10 Now, this case involves two types of patent  
11 claims--independent claims and dependent claims. In this  
12 case, claims 1 and 18 of the '259 Patent and claim 1 of the  
13 '738 Patent, as well as claims 1 and 15 of the '513 Patent,  
14 and claims 1 and 6 of the '679 Patent, are independent claims.  
15 Claims 4 and 12 of the '187 Patent are dependent claims.

16 An independent claim sets forth all the requirements that  
17 must be met in order to be covered by the claim. It's not  
18 necessary to look at any other claim to determine what an  
19 independent claim covers.

20 On the other hand, a dependent claim does not itself  
21 recite all the requirements of the claim, but refers to or  
22 depends from another claim for some of its requirements. In  
23 this way, the claim refers to or depends upon another claim.  
24 A dependent claim incorporates all the requirements of the  
25 claim to which it refers or from which it depends, and then

1 the dependent claim adds its own additional requirements.

2 So to determine what a dependent claim covers, ladies and  
3 gentlemen, it's necessary to look at both the dependent claim  
4 itself and any other claim to which it refers or from which it  
5 depends. Now, a product that meets all the requirements of  
6 both the dependent claim and the claim to which it refers or  
7 depends -- to which it refers or from which it depends is  
8 covered by that dependent claim.

9 Now, if a person or a corporation makes, uses, sells, or  
10 offers to sell within the United States, or imports into the  
11 United States what is covered by a patent claim without the  
12 patent owner's permission, that person or corporation is said  
13 to infringe the patent.

14 In reaching your decision on infringement, keep in mind  
15 again that only the claims of a patent can be infringed. You  
16 must compare the asserted claims as I have construed some of  
17 the language in them, to the accused products to determine  
18 whether or not there is infringement. This is the only  
19 correct comparison--the language of the asserted claims  
20 compared to the accused products.

21 You should not compare the accused products with any  
22 specific example set out in the patent or with any prior art.  
23 In determining infringement, again, the only correct  
24 comparison is between the accused products and the limitations  
25 of the claims as the Court has construed them. You must reach

1 your decision as to each assertion of infringement based on my  
2 instructions about the meaning and scope of the claims, the  
3 legal requirements for infringement, and the evidence that has  
4 been presented to you over the course of the trial from both  
5 sides in this case.

6 Let me now instruct you about some specific rules that  
7 you must follow in order to determine whether the Plaintiff  
8 Atlas has proven that the two Defendants TP-Link has directly  
9 infringed any patent claim involved in this case.

10 A patent can be directly infringed even if the alleged  
11 direct infringer did not have knowledge of the patent and  
12 without the direct infringer knowing that what it did was  
13 infringement of a claim. A patent may also be directly  
14 infringed even though the accused direct infringer believed in  
15 good faith that what it did was not infringement of the  
16 patent.

17 Now, you must determine separately and for each of the  
18 asserted claims whether or not there has been infringement.  
19 However, ladies and gentlemen, if you find that an independent  
20 claim on which other claims depend is not infringed, there  
21 cannot be infringement of any dependent claim that refers  
22 directly or indirectly to that independent claim.

23 But on the other hand, if you find that an independent  
24 claim has been infringed, you must then still decide  
25 separately whether the product meets the additional

1 requirements of any of the claims that depend from that  
2 independent claim; that is, whether those claims have also  
3 been infringed. A dependent claim includes all the  
4 requirements of any of the claims to which it refers or from  
5 which it depends plus the additional requirements of the  
6 dependent claim itself.

7 In this case, claims 4 and 12 of the '187 Patent, claims  
8 1 and 18 of the '259 Patent, claim 1 of the '738 Patent, claim  
9 15 of the '513 Patent, and claims 1 and 6 of the '679 Patent  
10 recite method claims. Direct infringement of a method claim  
11 occurs if all the steps of the claimed method are performed in  
12 the United States.

13 Claim 1 of the '513 Patent recites an apparatus claim.  
14 The Plaintiff Atlas must show by a preponderance of the  
15 evidence that the accused products include each and every  
16 element or limitation of the claim. In determining whether  
17 the accused products directly infringe a patent claim in this  
18 case, you must compare the accused product with each and every  
19 one of the requirements or limitations of that claim to  
20 determine whether the accused products contain each and every  
21 requirement or limitation recited in that claim. An accused  
22 product infringes a claim if it satisfies each of the claim  
23 elements, even though it may also be capable of non-infringing  
24 modes of operation.

25 Now, the two TP-Link Defendants are liable for direct

1 infringement if you find that the Plaintiff Atlas has proven  
2 that it is more likely than not that they have offered to sell  
3 in the United States or imported into the United States the  
4 invention defined in claim 1 of the '513 Patent.

5 A claim requirement is literally present if it exists in  
6 an accused product just as it is described in the claim  
7 language, either as I have explained that language to you or,  
8 if I did not explain it to you, as it would be understood by  
9 its plain and ordinary meaning to a person of ordinary skill  
10 in the art. If an accused product, ladies and gentlemen,  
11 omits any claim recited in the claim, then you must find that  
12 the accused product does not literally infringe the claim.

13 In this case, Atlas has also accused the TP-Link  
14 Defendants of indirect infringement by actively inducing  
15 TP-Link's U.S. distributor, which is called TP-Link USA, and  
16 the users of the accused products to directly infringe the  
17 asserted claims of the asserted patents. As with direct  
18 infringement, you must determine whether there has been active  
19 inducement on a claim-by-claim basis.

20 TP-Link Technologies and TP-Link Corporation, which  
21 you've heard me refer to throughout these instructions jointly  
22 as TP-Link, are liable for induced infringement of a claim  
23 only if the Plaintiff Atlas proves by a preponderance of the  
24 evidence that:

25 1. Acts have been carried out by the Defendants' U.S.

1 distributor, TP-Link USA, or users of the accused products  
2 that directly infringe that claim;

3       2. The TP-Link Defendants have taken action during the  
4 time the asserted patents were in force, intending to cause  
5 the infringing acts by their U.S. distributor TP-Link USA or  
6 by users of the accused products; and

7       3. The TP-Link Defendants have been aware of the  
8 asserted patents and have known that the acts of TP-Link USA  
9 or the acts of the users of the accused products constitute  
10 infringement of the asserted patents, or that they were  
11 willfully blind to that infringement.

12       Willful blindness, ladies and gentlemen, is established  
13 if the TP-Link Defendants believed there was a high  
14 probability that the acts, if taken, would constitute  
15 infringement of the asserted claims, but they deliberately  
16 avoided confirming that belief.

17       Now, to establish induced infringement, it is not  
18 sufficient that someone else directly infringes a claim, nor  
19 is it sufficient that the company accused of inducing  
20 another's direct infringement merely had knowledge or notice  
21 of the asserted patent or had been aware of the acts by  
22 another that allegedly constitutes direct infringement.

23       Further, the mere fact that the company accused of  
24 inducing another's direct infringement had known or should  
25 have known that there was a substantial risk that someone

1 else's act would infringe is not sufficient. Rather, in order  
2 to find inducement, you must find that the TP-Link Defendants  
3 specifically intended or willfully blinded themselves to that  
4 infringement.

5       Atlas and the TP-Link Defendants disagree on the date  
6 when the TP-Link Defendants first learned about the patents in  
7 this case. Atlas contends that the TP-Link Defendants had  
8 knowledge of the patents-in-suit and their alleged  
9 infringement, or willfully blinded themselves to Atlas'  
10 patents and its infringement, at least as of June the 8th,  
11 2021. The TP-Link Defendants contend that they first learned  
12 of the patents-in-suit and their alleged infringement as of  
13 the filing of Atlas' complaint in this case on November the  
14 22nd, 2021.

15       Now, if you find that TP-Link has infringed any claims of  
16 the asserted patents, then you must then consider what amount  
17 of damages, if any, to award to the Plaintiff Atlas.

18       I'm now going to instruct you, ladies and gentlemen,  
19 about the measure of damages, but by instructing you on the  
20 measure of damages, I am not suggesting which party should win  
21 this case on any issue.

22       If you find that TP-Link has not infringed any claim of  
23 the patents-in-suit, then Atlas is not entitled to any patent  
24 damages.

25       Atlas has the burden to establish the amount of its

1 damages by a preponderance of the evidence. In other words,  
2 you should award only those damages that Atlas establishes  
3 that it more likely than not suffered as a result of TP-Link's  
4 infringement. While Atlas is not required to prove the amount  
5 of its damages with mathematical precision, it must prove them  
6 with reasonable certainty. Atlas is not entitled to damages  
7 that are remote or only speculative.

8 Now, the damages that you might award, if any, must be  
9 adequate to compensate Atlas for any infringement that you may  
10 find. You must not award Atlas more damages than are adequate  
11 to compensate it for the infringement, and you must not  
12 include any amount in any damages award that you would make  
13 for the purpose of punishing TP-Link or for setting an  
14 example.

15 Now, the patent law specifically provides that damages  
16 for infringement may not be less than a reasonable royalty.  
17 In this case, Atlas seeks damages in the form of a reasonable  
18 royalty.

19 A royalty, ladies and gentlemen, is a payment made to a  
20 patent holder in exchange for the right to make, use, or sell  
21 the claimed invention. A reasonable royalty is the amount of  
22 royalty payment that the patent holder and the infringer would  
23 have agreed to in a hypothetical negotiation taking place at a  
24 time prior to when the infringement first began.

25 Now, in considering this hypothetical negotiation, you

1 should focus on what the expectations of the patent holder and  
2 the alleged infringer would have been had they entered into an  
3 agreement at that time and had they been acting reasonably in  
4 their negotiations. In determining this, you must assume that  
5 both parties believe the patents were valid and infringed and  
6 that both parties were willing to enter into an agreement.  
7 However, the hypothetical negotiation itself is not impacted  
8 by or dependent upon the real-world level of willingness, if  
9 any, of the parties to engage in such negotiations.

10 Now, the reasonable royalty you determine must be a  
11 royalty that would have been established from this  
12 hypothetical negotiation and not simply a royalty that either  
13 party would have preferred. Evidence of things that happened  
14 after the infringement first began can be considered in  
15 evaluating the reasonable royalty only to the extent that the  
16 evidence aids in assessing what the royalty would have  
17 resulted -- what royalty would have resulted from a  
18 hypothetical negotiation.

19 Although evidence of the actual profits of an alleged  
20 infringer -- that an alleged infringer made may be used to  
21 determine the anticipated profits at the time of the  
22 hypothetical negotiation, a royalty may not be limited or  
23 increased based on the actual profits the alleged infringer  
24 made.

25 Now, in considering the evidence of a reasonable royalty,

1 you're not required to accept one specific figure or another  
2 for the reasonable royalty. You're entitled, ladies and  
3 gentlemen, to determine what you consider to be a reasonable  
4 royalty based upon your consideration of all the evidence  
5 presented by all the parties during this trial, whether that  
6 evidence is of a specific figure or a range of figures.

7 A reasonable royalty must reflect that the original owner  
8 of the patents-in-suit declared the asserted patents to be  
9 essential to cellular standards and committed those patents to  
10 the Institute of Electrical and Electronics Engineers, which  
11 you've heard referred to during this trial as the IEEE, to  
12 license those patents on fair, reasonable, and  
13 non-discriminatory terms. And you've heard this referred to  
14 as FRAND, F-R-A-N-D--fair, reasonable, and non-discriminatory  
15 terms.

16 The original owner of the asserted patents made a  
17 commitment to the IEEE to grant a license regarding the  
18 asserted patents under reasonable rates to an unrestricted  
19 number of applicants on a worldwide basis with reasonable  
20 terms and conditions that are demonstrably free of unfair  
21 discrimination. These are sometimes referred to as FRAND  
22 terms and conditions. Atlas has committed to license the  
23 asserted patents on the same FRAND terms.

24 You must make sure that any reasonable royalty  
25 determination takes into account Atlas' FRAND obligations, as

1 I've just read them to you. A reasonable royalty in this case  
2 must be consistent with the Plaintiff's or Atlas' FRAND  
3 obligations. And the law requires that any royalty awarded to  
4 Atlas corresponds to the value of the alleged inventions  
5 within the accused products, not to the value of the features  
6 of Defendants' products that are not covered by Atlas'  
7 asserted patent claims.

8 This is particularly true where the asserted products  
9 have multiple features and multiple components not covered by  
10 the patent or where the accused products work in conjunction  
11 with other non-patented items. If unpatented features  
12 contribute to the accused product, you must apportion that  
13 value to exclude any value attributable to unpatented  
14 features. You must determine an appropriate royalty rate and  
15 an appropriate royalty base that reflect the value  
16 attributable to the patented invention alone.

17 Now, when dealing with standard essential patents, there  
18 are two special apportionment issues that arise. First, the  
19 patented features must be apportioned from all of the  
20 unpatented features reflected in the standard. Second, the  
21 patentee's royalty must be premised on the value of the  
22 patented features, not any added value by the standard's  
23 adoption of the patented technology.

24 Now, some of the factors that you may consider in making  
25 your determination are as follows:

1       1. The royalties received by the patentee for the  
2 licensing of the patents-in-suit, proving or tending to prove  
3 an established royalty;

4           2 the rates paid by the licensee for the use of other  
5 patents comparable to the patents-in-suit. Comparable license  
6 agreements include those covering the use of the claimed  
7 invention or similar technology;

8           3. The nature and scope of the license, as exclusive or  
9 non-exclusive, or as restricted or non-restricted in terms of  
10 territory or with respect to whom the manufactured product may  
11 be sold;

12           4. The duration of the patent and the term of the  
13 license;

14           5. The utility and advantages of the patented property  
15 over the old modes or devices, if any, that had been used for  
16 working out similar results;

17           6. The nature of the patented invention, the character  
18 of the commercial embodiment of it as owned and produced by  
19 the licensor, and the benefits to those who have used the  
20 invention;

21           7. The extent to which the infringer has made use of the  
22 invention and any evidence probative of the value of that use;

23           8. The portion of the realizable profits that should be  
24 credited to the invention as distinguished from non-patented  
25 elements, the manufacturing process, business risks, or

1 significant features or improvements added by the infringer;

2 9. The opinion and testimony of qualified experts; and

3 10. The amount that a licensor (such as the patentee)  
4 and a licensee (such as the infringer) would have agreed upon  
5 at the time the infringement began if both had been trying  
6 reasonably and voluntarily to reach an agreement; that is, the  
7 amount which a prudent licensee who desired as a business  
8 proposition to obtain a license to the patented invention  
9 would have been willing to pay as a royalty and yet be able to  
10 make a reasonable profit and which amount would have been  
11 acceptable to a prudent patentee who was willing to grant a  
12 license.

13 Now, ladies and gentlemen, you have heard of these  
14 factors referred to during the trial as the *Georgia-Pacific*  
15 factors. No one of these factors is dispositive, and you can  
16 and you should consider all the evidence that's been presented  
17 to you during the trial on each of these factors.

18 You may also consider any other factors which, in your  
19 mind, would have increased or decreased the royalty that the  
20 alleged infringer would have been willing to pay and the  
21 patent owner would have been willing to accept, acting as  
22 normally prudent business people.

23 Now, comparable license agreements are one factor that  
24 may inform your decision as to the proper amount and form of  
25 the reasonable royalty award, similar to the way in which the

1 value of a house is determined relative to comparable houses  
2 sold in the same neighborhood.

3 Whether a license agreement is comparable to the license  
4 under the hypothetical license scenario depends on many  
5 factors, such as whether they involve comparable technologies,  
6 comparable economic circumstances, comparable structure, and  
7 comparable scope. If there are differences between the  
8 license agreement and the hypothetical license, you must take  
9 those into account when you make your reasonable royalty  
10 determination.

11 If you find that Atlas, the Plaintiff, is entitled to  
12 damages, you must decide whether the parties would have agreed  
13 to a running royalty or whether they would have agreed to a  
14 fully paid up lump sum royalty at the time of the hypothetical  
15 negotiation.

16 A running royalty, ladies and gentlemen, is a fee paid  
17 for the right to use the patent that is paid for each unit of  
18 the infringing products that have been sold. If there are  
19 additional units sold in the future, any damages for these  
20 sales will not be addressed by you. If you decide that a  
21 running royalty is appropriate, then the damages that you  
22 award, if any, should reflect the total amount necessary to  
23 compensate Atlas for the TP-Link Defendants' past  
24 infringement.

25 However, a lump sum royalty is when the infringer pays a

1 single price for a license covering both past and future  
2 infringement. If you decide that a lump sum royalty is  
3 appropriate, then the damages you should award, if any, should  
4 reflect the total amount necessary to compensate the Plaintiff  
5 for the Defendants' infringement throughout the life of the  
6 patents.

7 If you find that Atlas has established that the TP-Link  
8 Defendants have indirectly infringed by inducement, as  
9 previously discussed, but have also found that Atlas has not  
10 established that the TP-Link Defendants themselves directly  
11 infringed any claim of the asserted patents, any award of  
12 damages must be limited to the date you find that the TP-Link  
13 Defendants had knowledge of the patents, or if you find that  
14 the TP-Link Defendants first willfully blinded themselves to  
15 the existence of the patents, then that date.

16 Atlas contends that the TP-Link Defendants' indirect  
17 infringement, if any, began as of June the 8th, 2021. The  
18 TP-Link Defendants contend that indirect infringement, if any,  
19 began no earlier than November the 22nd, 2021.

20 The parties also agree, however, that if you decide a  
21 running royalty is appropriate, then the end date for damages  
22 is September the 30th, 2022.

23 Now, with these instructions, ladies and gentlemen, we're  
24 ready at this point to hear closing arguments from the  
25 attorneys for the parties in this case.

1           The Plaintiff may now present its first closing argument.

2           MR. TRIBBLE: Thank you.

3           THE COURT: Would you like a warning on your time,  
4 Mr. Tribble?

5           MR. TRIBBLE: Your Honor, I'd like a warning when I  
6 reach 20 minutes.

7           THE COURT: I'll warn you when you have used 20  
8 minutes.

9           MR. TRIBBLE: Thank you.

10          THE COURT: You may proceed with the Plaintiff's  
11 first closing argument.

12          MR. TRIBBLE: Good morning.

13          We're at the end of the road. The case is soon going to  
14 be to be in your hands, but I'd like to take a second to just  
15 thank you for your service. As the Court has explained, trial  
16 by jury is a fundamental right in this country. I mean,  
17 people have fought and died to preserve our Constitution and  
18 our rights, and trial by jury is the one thing that totally  
19 distinguishes the United States justice system from that of  
20 any other country in the world.

21          And I know you've had to take time out of your lives and  
22 your work. Thank you. This case and the trial by jury, it's  
23 important -- trial by jury is important not just to help  
24 resolve this particular dispute, but also in resolving that,  
25 it sends a message to other companies on how they should

1 behave, and it avoids future disputes and future lawsuits.

2 And so let's go to the next slide.

3 At the beginning of this case, counsel for TP-Link told  
4 you that this is a simple case and that this case should be  
5 decided upon what's fair, what is reasonable, and what treats  
6 everybody the same. It was striking because that's not an  
7 argument that they don't infringe the patents; it's an  
8 argument about damages. And we'll get more to that a little  
9 later.

10 This is an unusual case. When I was questioning the  
11 corporate representative of both Defendants, it was stunning.  
12 I asked her, do they admit that they infringe the claims, that  
13 they may infringe the claims. And I was floored when she said  
14 yes. In fact, I asked her again, may infringe? Yes. That is  
15 incredible. That is a stunning admission. That's what this  
16 case is all about.

17 They don't seriously contest infringement, but they still  
18 put it up there, made us walk through with Doctor Shoemake,  
19 sitting right over there, for over four hours to throw it up  
20 there, throw it against the wall, and see if maybe you'll  
21 award us zero.

22 And the other thing she admitted, that TP-Link will take  
23 a license. I asked her why, why haven't you done it yet. She  
24 said, the price was too high. And so that's the other thing  
25 they're here. They're hoping you will fill in a low ball

1 number on damages.

2 Let's go to the next slide.

3 And so I'll talk briefly about infringement. Just -- I  
4 have to walk you through the evidence. And at the end of the  
5 day, the first question you'll be asked to decide is, was  
6 there infringement.

7 Next slide.

8 And in deciding this, the Court has instructed you that  
9 you are the sole judge of the credibility and the weight of  
10 the evidence. And so if you do that judgment as to the  
11 credibility and the weight of the evidence on infringement and  
12 as to damages, I hope and I think you will find that the  
13 greater weight of the evidence is in favor of Atlas.

14 Next slide.

15 And so we presented testimony from Doctor Shoemake. 25  
16 years of WiFi experience. You saw the huge WiFi standard that  
17 he read through, every page. He considered the infringing  
18 products. He's actually designed WiFi products himself. He  
19 has industry experience. He looked at the patents, looked at  
20 the products.

21 Let's go on.

22 And going through that, in addition to the standard, he  
23 looked at the TP-Link website and documentation about its  
24 products, and the WiFi chips inside. He looked at the data  
25 sheets and the documentation. He looked at the WiFi Alliance

1 certifications at issue in this case. And he looked at the  
2 source code of Intel and Broadcom.

3 And so he looked -- he presented primarily his analysis  
4 of just a few of the WiFi products that TP-Link offers. But  
5 as he testified, he looked at the documentation of every  
6 single accused product in this case, tested the products  
7 himself to confirm infringement. He looked at the deposition  
8 testimony and the responses to interrogatories that TP-Link  
9 filed with the Court.

10 And so he also testified about the features, these  
11 revolutionary features enabled by the patents, and explained  
12 how each of the patents contributed to these features--the  
13 download, the multiuser download enabled by OFDMA, the  
14 multiuser upload, and the MIMO and the trigger frames.

15 And so -- next slide.

16 He also explained how these features enabled by the  
17 patents gave important benefits to users of the access points  
18 and other devices of TP-Link, the higher network throughput,  
19 the increased efficiency, the lower latency, and the lower  
20 power consumption, which in our world becomes very important.

21 Let's go on.

22 And he also walked you through for those benefits. Those  
23 are the same benefits that TP-Link is selling. They are using  
24 it to sell to their consumers. The three times faster speed,  
25 four times higher capacity, the greater efficiency, they say,

1 because of that, you need WiFi 6. They don't say, WiFi 6 is  
2 out there, you might want to get it--they tell their  
3 customers, you need WiFi 6.

4 And the product packaging even, the boxes that TP-Link  
5 Technologies puts the devices in. Again, when you're looking  
6 in the store, they're promoting these same benefits that are  
7 enabled by the Atlas patents.

8 Next slide.

9 So at the end of the day when you're weighing evidence,  
10 you have two experts. You have Doctor Shoemake who testified  
11 for over four hours. Four hours. And why did we have to  
12 spend four hours? Because officially TP-Link wouldn't admit  
13 that they infringed until their corporate rep got up on the  
14 stand and said, well, maybe we infringe after all, after she  
15 heard Doctor Shoemake's testimony.

16 And then on the other side you have Doctor Hansen, and  
17 his testimony was flimsy at best. I mean, it was really  
18 another unusual aspect of this case. It was so weak. They're  
19 just throwing it against the wall.

20 And, in fact, if you look at it, he was asked on cross  
21 examination a key question, you know, did you do an  
22 infringement analysis. I mean, why would you hire a  
23 non-infringement expert and not have him do a real analysis of  
24 whether the products infringe or not?

25 And he didn't -- wouldn't admit it on the stand at first,

1 and we have a video depo of his prior sworn testimony in  
2 deposition, and here is what he said:

3 "Well, let's say if you're trying to determine whether  
4 any TP-Link product infringed any claim of the asserted  
5 patents, what sort of evidence would you look to to make that  
6 determination?

7 "I haven't -- you know, I don't believe I've done that  
8 analysis, and I don't -- I would have to -- you know, there  
9 would be -- I would have to perform some analysis on the  
10 products and the patent claims, and I haven't done that  
11 analysis."

12 And so essentially what he's saying is he didn't do an  
13 infringement analysis. He's an engineer. Half his testimony  
14 at the beginning was about TP-Link's -- how they handle  
15 letters and emails like the notice letters that we sent and  
16 how they ship products to the United States. You don't need  
17 an engineer to do that. Okay? He was up parrotting some  
18 canned defense arguments that were given to him by the  
19 lawyers.

20 And so -- let's go back a slide.

21 And so in our case here's what we assert. We assert  
22 direct infringement of claim 1 of the '513 Patent and induced  
23 infringement. And as to the others, they're methods of  
24 operation, and we say that TP-Link induces customers to  
25 practice the methods in the invention by using their devices,

1 and it induces infringement by selling to TP-Link USA.

2 And so back up.

3 So every claim that we assert, we're asserting induced  
4 infringement. So that would be a pretty big part of a  
5 legitimate analysis by the Defense expert.

6 Let's go to the next slide.

7 And yet amazingly he admitted -- Mr. Grinstein asked him,  
8 "Did I miss it or did you never even mention the words induced  
9 or inducement in your testimony yesterday or today?"

10 And he admits, "I don't recall mentioning induced  
11 infringement."

12 And so next slide.

13 So when you're weighing the evidence, remember what  
14 Doctor Hansen said was, well, in his view Atlas didn't meet  
15 its burden of proof. Well, that's not his job. Okay? You  
16 are the sole deciders of whether we've met our burden of  
17 proof. And it's the scales of justice, as the Court pointed  
18 out at the beginning. And you weigh the evidence.

19 And let's give them some false credit and say they had a  
20 little evidence. Look at the mountain of evidence that we've  
21 presented to you. And if the scales tip ever so slightly,  
22 even just a little bit in our favor, then it's more probably  
23 true than not.

24 And as I said, there's a mountain of this evidence. But  
25 don't be confused. We don't have to prove beyond a reasonable

1 doubt. We don't have to prove with certainty was there  
2 probably infringement. And, ladies and gentlemen, to me the  
3 evidence is all one-sided. And so we ask on Question 1 as to  
4 infringement, that you check yes.

5 Next slide.

6 So let's talk about the real issue in this case--damages.  
7 The key to this is, does TP-Link, after waiting years after  
8 receiving notice, years of litigation, the hundreds of  
9 thousands of dollars of expenses Atlas has had to incur for  
10 expert analysis to present to you, are they entitled to the  
11 same early discounts and other discounts that other licensees  
12 got who -- licensees who went immediately to the table and  
13 started negotiating? Their own expert admits that he's  
14 ignoring the discounts. And then, of course, after unsealing  
15 the courtroom, he then denied it right afterwards. That's  
16 credibility. You have to judge his credibility.

17 Next slide.

18 Treat everyone the same way.

19 Next slide.

20 And so our FRAND obligation. Okay? It doesn't say  
21 license everybody for the exact same per unit rate. That's  
22 not what it says. Let's take a look.

23 Next slide.

24 It says that we'll grant a license under reasonable rates  
25 without unfair discrimination.

1 Next slide.

2 So as you saw, Mr. Yudell, they offer everybody the same  
3 structure. You want to settle early, you get a 50 percent  
4 discount. You had high volume, you get a discount. You're  
5 one of the first adopters in your particular field, you get a  
6 discount. And everyone agreed that that is a proper way to  
7 license this. Mr. Yudell talked about it. Their own expert  
8 considered it. And Mr. Weinstein testified at length about  
9 this is the way to do it. In fact --

10 Next slide.

11 In fact, what he said was not only is this proper, but he  
12 said this is not unique to Atlas or this industry; these types  
13 of discounts are common; this is a common structure that  
14 complies with FRAND. And that's all we're asking for.

15 Next slide.

16 And Mr. Weinstein walked through the four discounts.

17 Next slide.

18 Oh, Your Honor, at this point I request respectfully that  
19 the Court seal the courtroom.

20 THE COURT: All right. Based on counsel's request,  
21 I'll order the courtroom sealed. I'll direct those not  
22 subject to the protective order to excuse themselves until the  
23 courtroom is reopened and unsealed.

24 (Courtroom sealed.)

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(Courtroom unsealed.)

7 THE COURT: Once the public has returned, Mr. Reed,  
8 you may present Defendants' closing argument.

9 Would you like a warning on your time?

10 MR. REED: Yes, Your Honor. A warning at five  
11 minutes, please.

12 THE COURT: I'll warn you when you have five minutes  
13 remaining. You may proceed with Defendants' closing argument.

14 MR. REED: Good morning, ladies and gentlemen.

15 Let me start also by thanking you for your service on  
16 this jury. I know that no one plans to spend a week listening  
17 to evidence about WiFi 6 standards, listening to evidence  
18 about what's fair and reasonable in damages. I thank you for  
19 making the sacrifice, taking time to help us, to help the  
20 parties, resolve this dispute that's come up between us.

21 Now, back when I did my opening, you remember that I told  
22 you that Atlas was going to throw a lot of technical  
23 information at you, and that's exactly what happened. But I  
24 also told you that this case can be resolved on simple  
25 principles.

1       Now, with all due respect to Mr. Tribble, he didn't  
2 correctly characterize my opening. I didn't just say it's  
3 only resolved on damages. You recall we talked about the  
4 burden of proof in my opening, who has the burden of proof of  
5 proving infringement. We talked about how Atlas is the only  
6 company in this case that has the burden of proof. You heard  
7 that in the judge's jury instructions this morning. Atlas has  
8 the burden of proof.

9       And so the first question you have to answer in this case  
10 is, have they met their burden of proof on infringement? And  
11 then if you decide that they have, then you reach the second  
12 question. That's where those other principles come into play,  
13 the principles of what is fair, what is reasonable, and what  
14 treats everyone the same way. And those are the four  
15 principles that you really need to decide the case today,  
16 despite all the technical information and things you've seen.

17       Now, in particular, you're going to be asked to answer  
18 four basic questions. First, did Atlas satisfy its burden of  
19 proof in showing that the TP-Link products infringe these  
20 claims? That's the first question. If you answer that  
21 question no, then you don't have to answer the next three  
22 questions because that's the end of the inquiry. That's the  
23 end of the case.

24       But if you decide that they have somehow met their  
25 burden, then you need to move on to the next two, three, and

1 four questions. You have to decide what is fair, reasonable,  
2 and non-discriminatory for a royalty rate. You have to decide  
3 how much you need to reduce that rate based on the fact that  
4 the rates out there are for the whole portfolio. How much do  
5 you need to reduce it for the fact that in this case there are  
6 only five patents out of the total of 38 patent families in  
7 the portfolio?

8 And then, finally, you would need to answer the question  
9 of what are the total sales to which to apply the royalty.  
10 Those are the four questions that need to be answered in this  
11 case.

12 Now, let's start with the first: Did Atlas satisfy its  
13 burden of proving infringement? Now, before we get too far  
14 into that, I want to talk about what's called a common  
15 fallacy. Now, a fallacy is kind of a lawyer word that we use  
16 to describe an argument that's just not logically correct, and  
17 so if it's not logically correct, it's a false argument.

18 Let me give you an example. Take a look at this first  
19 statement on the screen and ask yourself the question, is this  
20 statement true: If it is a lime, then it must be green. Is  
21 that a true statement? Well, we all know that limes are green  
22 so the answer is, yes, that's a true statement. If it is a  
23 lime, then it must be green. That is true.

24 But what about the inverse of that statement? What about  
25 this statement: If it is green, it must be a lime. Is that

1 statement true? Well, of course, that statement's false. And  
2 why is it false? Because there are lots of things in the  
3 world that are green that are not limes.

4 So whereas the first statement could be true, the inverse  
5 of that statement is false. That's the fallacy. And when you  
6 say a statement is true, the inverse is also true. That's the  
7 fallacy.

8 So how does that apply to this case? Well, in this case  
9 we don't have any lime fallacy, we have an infringement  
10 fallacy. Take a look at that first sentence on the screen.  
11 If it practices Atlas' patents, then it must use WiFi 6.

12 Now, we saw a lot of testimony from Doctor Shoemake  
13 showing that many of the elements of Atlas' patents are found  
14 in the WiFi 6 standard. So for the sake of argument, he may  
15 be right. That statement may be true. If you do everything,  
16 every element in Atlas' claims, you may be practicing or using  
17 the WiFi 6 standard. That statement may be true.

18 But that does not mean that the inverse of that statement  
19 is true. It does not mean that if it uses WiFi 6, then it  
20 must practice Atlas' patents. That is a fallacy. And why is  
21 it a fallacy? Because, as Doctor Hansen testified, there are  
22 many ways to implement the WiFi 6 standard that don't touch  
23 Atlas' patents.

24 And why is that the case? Well, as you've heard  
25 testimony in this case, the WiFi 6 standard is very large. It

1 has over 750 pages with I don't know how many features,  
2 countless features. Atlas' patents are very narrow. They  
3 allegedly only cover three of those features. So you can  
4 practice the WiFi 6 standard, you can use the WiFi 6 standard,  
5 you can be compliant with the WiFi 6 standard, and you can use  
6 a whole host of features and be operable without touching  
7 those three features that are in the Atlas patents.

8 Now, why is that important? Well, it's important because  
9 it goes directly to the question of whether Atlas has  
10 satisfied its burden of proof in this case. Remember, to  
11 satisfy its burden, Atlas must show that every element, every  
12 element, of every claim is found in an accused product. It's  
13 not enough to say the claim elements are found somewhere in  
14 the standard. That's not what they have to prove. That's the  
15 fallacy I showed you. It's not whether it's found in the  
16 standard; it's whether it's found in the product. And Atlas,  
17 ladies and gentlemen, has not shown you that in this case.

18 Now, I need to address something Mr. Tribble said earlier  
19 about the supposed stunning admission that our corporate  
20 representative made at this trial. There's been no stunning  
21 admission at this trial. What did she say? He asked her, a  
22 non-engineer, do your products infringe the patents? And what  
23 does she say? She says, they may. She didn't say they do,  
24 she didn't say they don't, she said they may.

25 And why did she say that? It's because, as I told you in

1 our opening statement, we've heard testimony here today,  
2 TP-Link -- or during the trial, TP-Link does not make the WiFi  
3 chips that go into these products. TP-Link does not have  
4 access to the source code that describes how those WiFi chips  
5 actually function.

6 So TP-Link does not have a mechanism to go into the  
7 product and figure out whether it infringes Atlas' patents.  
8 Only the chipmakers, Broadcom, Qualcomm, Intel, MediaTek,  
9 those are the only companies that have the information that is  
10 needed to show whether or not TP-Link infringes. So when she  
11 said they may infringe, it's not a stunning admission. That's  
12 simply telling the truth, that TP-Link does not have the  
13 source code needed to determine infringement.

14 Now, recall we sat through four hours and 172 PowerPoint  
15 slides from Doctor Shoemake, and you saw him put a hundred or  
16 more checkmarks on his PowerPoint. But what did he really  
17 show you in that presentation? Did he show you that every  
18 element of even one single claim is found in a TP-Link  
19 product? No.

20 What he showed you was that a couple of elements may be  
21 found in certain TP-Link products, but everything else he  
22 pointed to was not the product, but the WiFi standard. He  
23 didn't show you what the products do; he showed you what's in  
24 this 750 pages. That's not the infringement question in this  
25 case.

1       So instead of providing you with evidence of  
2 infringement, he provided you evidence of the fallacy that I  
3 showed you earlier, the fallacy that if you use WiFi 6, you  
4 must infringe these patents.

5       In fact, for every single claim, for every claim without  
6 exception, he used the WiFi 6 standard to check his box.  
7 Every claim. And I'll show you briefly that's true. '259,  
8 claim 18, for this element, he didn't show that it was found  
9 in the product; he showed it was found in the WiFi standard.

10      For claim 1, he said same evidence applies. So he didn't  
11 show it's not in the product, only found in the standard.

12      '513, claim 15, for this element, didn't show that it was  
13 found in a product, only showed it was found in a standard.

14      '513, claim 1, same evidence, didn't show it in the  
15 product, only in the standard.

16      '738, claim 1, for this element, didn't show it in the  
17 product, only showed it in the standard.

18      '679, claim 6, didn't show it in the product, only showed  
19 it in the standard.

20      And claim 1, same evidence as claim 6, it's the same  
21 flaw.

22      '187, claim 4, this element didn't show it in the  
23 product, only showed it in the standard.

24      '187, claim 12, same evidence as claim 4, didn't show it  
25 in the product, only showed it in the standard.

1       Now, ladies and gentlemen, do you know what is most  
2 surprising about this, what's surprising about Doctor  
3 Shoemake's approach? It's that Doctor Shoemake actually had  
4 access to the source code. He could have gone into the source  
5 code, and if it was there, he could have showed you, okay,  
6 here in the source code is every element of each of the  
7 practicing claims.

8           Doctor Shoemake admitted the source code is a software  
9 that runs inside processors inside the chips that dictates how  
10 the product actually functions. The source code dictates how  
11 the product actually functions, and he had that source code.  
12 And he had it for Broadcom, he had it for Intel. He said he  
13 could have looked at it for Qualcomm and MediaTek and just  
14 decided not to do so.

15           So why would you not do that? Why would you not use the  
16 source code to show infringement? Why would you just keep  
17 using the standard? The only reasonable inference to take  
18 from that is because he looked in the source code and it  
19 wasn't there. For the Broadcom and Intel source code he  
20 showed you, he didn't show a single claim -- that a source  
21 code satisfied the elements of a single claim. He showed you  
22 an element here or source code shows an element here or source  
23 code shows an element over there or maybe in this claim 1,  
24 maybe in this other claim 1, but he never showed you a whole  
25 claim satisfied by source code.

1       And why? What's the inference you have to draw from  
2 that, is that it wasn't there. He looked and it wasn't there  
3 and then he stopped and said, okay, it's not in Broadcom, not  
4 Intel, I'm done. I'm not going to look at Qualcomm, I'm not  
5 going to look at MediaTek. But he still had to try to prove  
6 infringement. So what did he do? Instead of trying to prove  
7 the product infringes the claims, he tried to prove the  
8 fallacy, the fallacy that, oh, well, if it says WiFi 6, it  
9 infringes the patents.

10       Ladies and gentlemen, you saw the same thing with Doctor  
11 Shoemake's product testing. Mr. Tribble mentioned, oh, he did  
12 all this testing to prove the products infringe. What did he  
13 really do? There are 69 products in this case. How many did  
14 he test? He tested only six. Why stop at 6? There's no  
15 testimony from Doctor Shoemake that he couldn't have gone to  
16 Walmart or couldn't have gone to Amazon and acquired all 69  
17 products. Nothing to suggest that.

18       So why didn't he do it? Again, the only reason that  
19 makes sense is he realized the evidence just wasn't there.  
20 And he tested six products, and even though he tested six  
21 products, he did not show you once, not once, that an entire  
22 claim, every element, is proven by that testing.

23       And so he tried one, two, three, four, five, six  
24 products, couldn't do it, and said, I'm done. I'm not going  
25 to show what the actual product does. Instead, I'm going to

1 show what the WiFi 6 standard says. I'm not going to prove  
2 infringement; I'm going to prove the fallacy.

3 So how has Atlas tried at this trial to distract you from  
4 the fact that it hasn't met its burden? Well, one of the  
5 things you saw yesterday and what you saw again today was them  
6 try to distract you by trying to shift the burden to TP-Link.

7 You recall Mr. Grinstein's testimony or cross examination  
8 of our technical expert yesterday. How many times did he ask  
9 him, why didn't you look at the evidence to prove you don't  
10 infringe? If you wanted to prove TP-Link doesn't infringe,  
11 why didn't you do this? If you wanted to prove TP-Link  
12 doesn't infringe, why did you do that?

13 And the reason why is that TP-Link does not have to prove  
14 it doesn't infringe. TP-Link does not have a burden of  
15 proving it doesn't infringe. Atlas is the only one with the  
16 burden in this case. They have to prove we don't infringe.  
17 If they don't meet their burden, we don't infringe.

18 And so our expert -- they showed a clip from our expert.  
19 Well, why didn't you evaluate whether they infringe? Because  
20 that's not his job. He wasn't hired to evaluate whether we  
21 infringe. He was hired to evaluate whether Doctor Shoemake  
22 had proven that we infringed. He was hired to determine  
23 whether Doctor Shoemake had met his burden of proving that we  
24 infringe. And he determined in every instance, including by  
25 looking at the Qualcomm source code which Doctor Shoemake did

1 not look at, that he had not met that burden. That was his  
2 job.

3 So, ladies and gentlemen, the infringement question in  
4 this case really boils down to one simple question: Who is on  
5 trial here? Is TP-Link on trial in this case or is the WiFi 6  
6 standard on trial in this case? If the WiFi 6 standard was  
7 the Defendant in this case, I might actually agree with Doctor  
8 Shoemake. I might agree that maybe it shows that the WiFi 6  
9 covers a variety of elements. But WiFi 6 is not the defendant  
10 here. TP-Link is the Defendant here.

11 And as you heard the Court say during the jury  
12 instructions this morning, the only correct comparison is  
13 between the accused products and the patent claims. That was  
14 in the instructions you heard from the Court this morning, and  
15 you can read those in your instructions back in the jury room.  
16 The only correct comparison is between the accused products  
17 and the patent claims.

18 You're not going to see an instruction that says, oh,  
19 well, another acceptable comparison is between the WiFi 6  
20 standard and the patent claims, because that is not the law.  
21 That is not Atlas' burden. Atlas' burden was to prove that  
22 the accused product used every element in those patent claims,  
23 not that the WiFi 6 standard had those elements in it. And  
24 because they haven't shown that the accused products practice  
25 every limitation in Atlas' claims, they haven't met their

1 burden.

2       And because they haven't met their burden, you must find  
3 that TP-Link does not infringe in this case. And you can do  
4 that by checking the no box on the first question on the jury  
5 form. And once you've checked that box, you'll see from the  
6 instructions on the verdict form, once you check no on the  
7 form, your job is actually done. You don't have to go on to  
8 the remaining questions. You don't have to answer any of the  
9 remaining issues. You go to the back of the verdict form, you  
10 sign it, and you get to go home.

11       Well, let's talk for the sake of argument about damages.  
12 Again, we don't believe they're entitled to any damages  
13 because they haven't met their burden of proof on  
14 infringement, but let's assume for the sake of argument that  
15 they had, they somehow proved infringement. The next question  
16 becomes, what is fair and reasonable and non-discriminatory  
17 for a royalty rate.

18       Let me ask you a question that you may be more familiar  
19 with than maybe WiFi 6, and that question is buying a car.  
20 When you're buying a car, who do you look to to tell you the  
21 fair and reasonable price of that car? If you're going to buy  
22 a car, would you go talk to the dealer, to the salesperson,  
23 and say, hey, tell me what is a fair and reasonable price for  
24 this car? I guarantee you their answer would be, well, the  
25 fair and reasonable price is what's on this sticker right

1 here. That's fair, that's reasonable. Or do you look to what  
2 people have actually paid for the car in question, what people  
3 in the real world have actually paid to get that vehicle?

4 Now, there's always discounts applied. There's loyalty  
5 discounts, and friend and family discounts. There's Memorial  
6 Day blow-out discounts, and all sorts of discounts that, you  
7 know, dealers use to try to get the price to where it should  
8 be. But when you're trying to figure out what is the actual  
9 fair and reasonable price, who are you going to talk to, the  
10 dealer who's going to point to the sticker or are you going to  
11 look to the market, what people are actually paying for the  
12 car?

13 And, Your Honor, at this time I'd respectfully request  
14 that we seal the courtroom.

15 THE COURT: All right. Based on counsel's request,  
16 I'll order the courtroom sealed and direct those present not  
17 subject to the protective order to exit the courtroom until  
18 it's reopened.

19 (Courtroom sealed.)  
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(Courtroom unsealed.)

THE COURT: All right. You may proceed with your  
final closing statement for the Plaintiff.

1 MR. WARD: Thank you, Your Honor.

2 May it please the Court, counsel.

3 I, too, want to thank you. I thank you for your time  
4 because time is precious and I'm going to talk to you about  
5 time a little bit.

6 One thing that I think we can agree on, I think you'll  
7 agree with me, is that this trial should be a search for the  
8 truth. That's what we want to find here. Right? Who's  
9 telling you the truth?

10 Now, the Court's instructed you about some ways that you  
11 can determine credibility of witnesses, credibility of  
12 defenses, and that's something that I want to talk to you  
13 about are some of the things that I think can help you make  
14 that determination of who is credible in this case.

15 We do have limited time. Right? The Court keeps a timer  
16 on us. He's told us how much I have to close, how much time  
17 we've got for witnesses, because court resources are precious,  
18 your time is precious. We know it's an imposition on you to  
19 be here.

20 I asked you during voir dire about frivolous lawsuits.  
21 Everyone raised their hand. There's too many frivolous  
22 lawsuits. I agree. They take up time. They take up  
23 resources. But you know one thing we didn't talk about are  
24 frivolous defenses. And I think you've seen that in this  
25 case. They say, oh, TP-Link doesn't want to be here, Atlas

1       wants to be here.

2           I'm sure TP-Link doesn't want to be held to account. I'm  
3       sure that's true.

4           Do you really think Atlas wants to be here fighting  
5       defenses that they throw up their hands, don't throw up any  
6       opposition to after we spent hundreds of thousands of dollars  
7       because for two years they said, we don't infringe, we don't  
8       infringe, they get in here and they say, well, maybe.

9           We bring you Doctor Shoemake.

10          Doctor Shoemake, would you please stand up, sir?

11          You all saw Doctor Shoemake on the stand. We've heard  
12       about his four hours.

13          Thank you, Doctor Shoemake.

14          He testifies for four hours. He's a preeminent expert.  
15       He goes through lots of information. And did you hear all  
16       those cross points that Mr. Reed talked about in closing, how  
17       they attacked him about, well, Doctor Shoemake, you didn't go  
18       through this product, you didn't cite this document, you only  
19       mapped the standard here? You remember all that cross?

20          Huh! You don't remember it because it didn't happen.  
21       What you just heard was what they wish the evidence was. What  
22       he just argued, showing you slides about how Doctor Shoemake  
23       didn't check this box right, there wasn't any evidence to  
24       support this element. Did they get up, did they have the guts  
25       to ask him any of those questions when he's on the stand?

1 They didn't. What does that tell you about the strength of  
2 this defense of non-infringement?

3 That's what's upsetting to us. We wasted your time, we  
4 wasted our time, we wasted the resources, we wasted the  
5 Court's resources, when you-all just saw they spend the  
6 majority of their time talking to you about damages because  
7 that's what this case is about. But they throw the Hail,  
8 Mary. They think, well, what if we could maybe convince them  
9 they didn't check the box right? How about if we compare the  
10 lines in a patent claim to the lines in the standard?

11 Well, what does that have to do with? Nothing.

12 They talk about, well, he didn't show you source code for  
13 every product. No, he didn't. He spent the time, he looked  
14 at the code on some of these products, and it confirmed what  
15 the chip sheets that they produced to us showed. He said, I'm  
16 not going to spend more of your time and waste more time and  
17 money proving what I've already proven. He went through nine  
18 different categories of evidence. Some things applied to some  
19 products, some things didn't. Did they challenge any of it?  
20 No.

21 So why would they do that? Why would they behave this  
22 way? Because you've gotten to see what we've been dealing  
23 with for two years. They will say anything, they will do  
24 anything, to get a cheaper price.

25 They're no longer saying, well, we sued the wrong

1 defendant. They quit talking about TP-Link should have been  
2 here because you-all know that if we'd sued TP-Link, TP-Link  
3 would have been saying, oh, you've got the wrong defendant,  
4 you should have sued TP-Link Corp or TP-Link Tech. You've got  
5 this rat's nest of corporate structure and, you know, go  
6 figure it out because whoever you don't sue, we'll point the  
7 finger at them.

8 Now, you've learned that we've got indirect infringement  
9 claims on every one of these products. So we don't have to  
10 prove that they make, use, sell, or offer for sale for  
11 indirect. We just have that on one claim. And you-all saw  
12 the website that they now want to distance themselves from and  
13 act like, oh, well, that's not ours. Got their copyright on  
14 it. It's got their terms of service.

15 Can we see that slide 3?

16 Their terms of service say, TP-Link Corporation, Ltd.,  
17 provides the website tp-link.com/us. That's what their terms  
18 of service say on the website.

19 And what does Ms. Sun say on the stand? Oh, that's  
20 wrong; that's just a header and a footer. Don't believe your  
21 lying eyes. Trust me. That's not what that means. It  
22 doesn't mean what it says.

23 That's who we're dealing with.

24 Doctor Shoemake took you through indirect infringement.  
25 I'm not going to spend any more time on this. He showed you

1 how TP-Link Corp and Tech package up these products, they put  
2 the labels on them, they put the user manuals on them, they  
3 send them to the United States where people use them just as  
4 they are intended, and they infringe the claims of the  
5 patents.

6 Well, then they throw up an argument from Doctor Hansen.  
7 They know infringement's there, and then they want to tell  
8 you, well, WiFi 6 really isn't that much better than WiFi 5.

9 Can we see slide No. 6?

10 This is Doctor Hansen's slide. He starts talking to you  
11 about how WiFi 5 covers a 17,000-square-foot house and WiFi 6  
12 gives you a couple of thousand feet more.

13 Did you hear anybody during our presentation say that you  
14 get more square footage covered in your McMansion with WiFi 6?  
15 No, that's not what we talked about the benefits of WiFi 6 and  
16 these inventions.

17 Go to the next slide.

18 The benefits of the patented WiFi 6 technology, this is  
19 from Doctor Shoemake's presentation where he took you through  
20 the features that are embodied in the patents in this case,  
21 and how they improve efficiency, speed, and coverage, and then  
22 he mapped them on the products that the Defendants sell. And  
23 that's why it took four hours. I guess they would have  
24 preferred us to go through every product, every product, every  
25 element, every claim, which he said he did that homework and

1 he presented the evidence to you-all. I guess they would say,  
2 well, you know what, we need an eight-week trial so that we  
3 can just kill a jury walking them through every claim on every  
4 product.

5 Again, if they wanted to challenge his analysis, the time  
6 to do it was when he was on the stand, not in closing argument  
7 when he can't respond to anything. But, again, that's what  
8 we're dealing with.

9 Your Honor, I'm going to have to request that the  
10 courtroom be sealed.

11 THE COURT: All right. I'll order the courtroom  
12 sealed at this time at counsel's request. If you're not  
13 subject to the protective order in this case, you should exit  
14 the courtroom until it's reopened.

15 (Courtroom sealed.)

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(Courtroom unsealed.)

THE COURT: All right. For the record, the courtroom is reopened.

Ladies and gentlemen, you've heard closing arguments from the parties through their counsel.

I would now like to provide you with just a few final instructions before you begin your deliberations.

You must perform your duty as jurors without bias or prejudice as to any party. The law does not permit you to be controlled by sympathy, prejudice, or public opinion. All parties expect that you will carefully and impartially consider all the evidence, follow the law as I have given it to you, and reach a just verdict regardless of the consequences.

1       Answer each question in the verdict form based on the  
2 facts as you find them to be following the instructions that  
3 the Court has given you on the law. Again, do not decide who  
4 you think should win and then answer the questions to reach  
5 that result. One more time, let me remind you that your  
6 answers to the questions in the verdict form must be  
7 unanimous.

8       You should consider and decide this case as a dispute  
9 between persons of equal standing in the community of equal  
10 worth and holding the same or similar stations in life. This  
11 is true in patent cases between corporations, partnerships, or  
12 individuals.

13       A patent owner is entitled to protect its rights under  
14 the laws of the United States, and this includes bringing a  
15 suit in a United States District Court for money damages for  
16 infringement.

17       The law recognizes no distinction among types of parties.  
18 All corporations, partnerships, other business organizations,  
19 and individuals stand equal before the law regardless of who  
20 they are, regardless of their size, and regardless of who owns  
21 them.

22       When you retire to the jury room in just a few minutes to  
23 deliberate on your verdict, as I have told you, you'll each  
24 have a copy of these final instructions to take with you and  
25 to review.

1       If during your deliberations you desire to review any of  
2 the exhibits which the Court has admitted into evidence and  
3 which have been presented to you during the trial, you should  
4 advise me by giving a written note requesting that exhibit or  
5 those exhibits to the Court Security Officer who will bring it  
6 to me. The notes should be signed and dated by your  
7 foreperson. I will then send that exhibit or exhibits to you.

8           Once you retire, you should first select your foreperson  
9 and then conduct your deliberations. If during your  
10 deliberations you decide to recess at any time, follow all the  
11 instructions that the Court's given you about your conduct  
12 during the trial.

13           After you've reach a verdict, your foreperson is to fill  
14 in your unanimous answers to those questions in the verdict  
15 form, sign it and date it, and then advise the Court Security  
16 Officer you've reached a verdict. Do not reveal your answers  
17 until such time as you are discharged, unless otherwise  
18 directed by me. And you must never disclose to anyone, not  
19 even to me, ladies and gentlemen, your numerical division on  
20 any unanswered question.

21           Any notes that you've taken over the course of the trial  
22 are aids to your memory only. If your memory should differ  
23 from your notes, then you should rely on your memory and not  
24 your notes. The notes are not evidence, and a juror who has  
25 not taken notes must still rely on his or her own independent

1       recollection of the evidence and should not be unduly  
2       influenced by the notes of other jurors. Notes are not  
3       entitled to any greater weight than the recollection or  
4       impression of each juror about the testimony.

5           If during your deliberations you want to communicate with  
6       me at any time, you should give a written message or a  
7       question signed by your foreperson to the Court Security  
8       Officer who will bring it to me, and I'll then respond as  
9       promptly as possible either by having you brought back into  
10      the courtroom where I can address you orally, or I'll respond  
11      to your question by written answer returned to you in the jury  
12      room. I will always first disclose to the attorneys in the  
13      case any question or message you may send me before I respond  
14      to any question or message.

15           Now, after you've reached a verdict and I have discharged  
16      you from your position as jurors in this case, I want you to  
17      understand you are not required to talk with anyone about your  
18      service in this case. However, ladies and gentlemen, at that  
19      time and after I have discharged you from your position as  
20      jurors, you will be completely free to talk with anyone of  
21      your choosing about your service in this case. That decision  
22      will be left up to each of you 100 percent. You will each  
23      make your own decisions in that regard. No one will force you  
24      to talk about your service, but you will be completely free,  
25      if you choose to, to talk about your service as jurors.

I'm now going to hand a clean verdict form together with seven copies of these final instructions to the Court Security Officer who will deliver them to you in the jury room.

4           Ladies and gentlemen of the jury, you may now retire to  
5 the jury room to deliberate on your verdict. We await your  
6 decision.

7 (Whereupon, the jury left the courtroom.)

8 THE COURT: Be seated, please.

9           Counsel, while the jury is deliberating, you are welcome  
10          to wait here in the courtroom or to have a representative wait  
11          here. You are also free to wait at your respective locations  
12          outside the courtroom. I am going to ask that you not go any  
13          further away than that in case we get a question or upon the  
14          jury's return of a verdict. We will contact you by telephone  
15          or email if we receive a question or when a verdict is  
16          returned.

17 Pending either a question for the jury -- from the jury  
18 or a return of their verdict, we stand in recess.

19 | (Jury deliberates.)

THE COURT: Be seated, please.

21 Counsel, I've received the following note from the jury.  
22 It reads as follows:

23 "We need a calculator. Two, please."

24 And it's signed by Mr. Jeffery L. Johnson, who is Juror  
25 No. 2 as the foreperson of the jury.

1 I have two handheld calculators. Memories have been  
2 cleared. Any objection from either side as to me sending  
3 these into the jury?

4 MR. TRIBBLE: No objection from Plaintiff.

5 MR. REED: No objection for Defendants.

6 THE COURT: All right. I'll hand the calculators to  
7 the Court Security Officer and direct them to deliver them to  
8 the jury. And I'll deliver the original note from the jury to  
9 the Courtroom Deputy.

10 Pending either another note from the jury or the return  
11 of a verdict, we remain and we stand in recess.

12 (Deliberations continue.)

13 THE COURT: Be seated, please.

14 Counsel, I've received the following note from the jury:  
15 "We have come to a verdict."

16 This is signed by Mr. Johnson as foreperson. And I will  
17 hand the original note to the Courtroom Deputy.

18 Is there any reason I shouldn't bring in the jury and  
19 receive their verdict?

20 MR. TRIBBLE: I don't believe so, Your Honor.

21 MR. REED: No, Your Honor.

22 THE COURT: Let's bring in the jury, please.

23 (Whereupon, the jury entered the courtroom.)

24 THE COURT: Please be seated, members of the jury.

25 Mr. Johnson, I understand you are the foreperson of the

1 jury. Is that correct?

2 THE PRESIDING OFFICER: Yes, sir.

3 THE COURT: Has the jury reached a verdict?

4 THE PRESIDING OFFICER: Yes, Your Honor.

5 THE COURT: Will you hand the completed verdict form  
6 to the Court Security Officer who will bring it to me?

7 Ladies and gentlemen of the jury, I'm going to announce  
8 the verdict into the record at this time, and I'm going to ask  
9 each member of the jury to listen very carefully as I do this,  
10 because once I have announced the verdict into the record, I'm  
11 going to poll the jury to make sure that this is, in fact, the  
12 unanimous verdict of all seven members of our jury.

13 Turning to the verdict form and beginning on page 4 where  
14 Question 1 is found, "Did Atlas, the Plaintiff, prove by a  
15 preponderance of the evidence, that TP-Link, the Defendants,  
16 infringed any of the asserted claims?"

17 The jury's answer is, "Yes."

18 Turning to page 5 of the verdict form where Question 2A  
19 is found, "What sum of money if now paid in cash has Atlas,  
20 the Plaintiff, proven by a preponderance of the evidence would  
21 compensate it as a fair, reasonable, and non-discriminatory  
22 FRAND royalty for the Defendants' infringement of the asserted  
23 claims that you have found to be infringed?"

24 The jury's answer is, "\$37,481,264."

25 Question 2B follows on page 5 of the verdict form. "Is

1 the total amount of the reasonable royalty that you have found  
2 in Question 2A a one-time lump sum for past and future sales  
3 or a running royalty for past sales only?"

4 The jury's answer is, "Lump sum."

5 Turning to page 6, which is the final page of the verdict  
6 form, I find it is dated with today's date, September the  
7 14th, 2023, and it is executed by Mr. Johnson as foreperson of  
8 the jury.

9 Ladies and gentlemen of the jury, let me poll you at this  
10 time to make sure and to evidence in the record that this is,  
11 in fact, the unanimous decision of all seven members of the  
12 jury. If this is your verdict as I have read it, would you  
13 please stand up? Thank you, ladies and gentlemen of the jury.  
14 Please be seated.

15 Let the record reflect that all seven members of the jury  
16 immediately rose and stood in response to the Court's question  
17 to poll the jury. This confirms that this is the unanimous  
18 verdict of all seven members of the jury.

19 Ladies and gentlemen, I accept the jury's verdict and I  
20 will hand the original executed verdict form to the Courtroom  
21 Deputy.

22 This now completes the trial of this case, ladies and  
23 gentlemen. From the very beginning, I have instructed you  
24 time and time again about your conduct during the trial. I  
25 had directed you not to do certain things. I have told you

1 probably more times than you wanted to hear not to communicate  
2 with anybody, including the members of the jury itself, about  
3 the evidence in this case until you retire to deliberate. I  
4 am releasing you from all those instructions and all those  
5 requirements. I'm releasing you as members of this jury now  
6 that you have completed your job and the Court has accepted  
7 your verdict.

8 I want to mention one thing to you. Now that the verdict  
9 has been accepted by the Court and you have been discharged as  
10 jurors, I'd like to ask a personal favor of each of you. That  
11 is, when you get up from those chairs in just a minute,  
12 instead of immediately leaving the courthouse, I'd like you to  
13 go back in the jury room, if you would, for just a few minutes  
14 and allow me the privilege of coming into the jury room. I  
15 would like to shake each hand, I would like to look each one  
16 of you in the eye and tell you personally, person to person,  
17 thank you for your service in this case. I am convinced what  
18 you've done is significant and important and is worthy of that  
19 kind of personal thanks, and I would consider it a great  
20 personal honor if you would allow me to thank you in person  
21 before you leave. This has been a long trial. You've worked  
22 hard. I promise you I'm not going to keep you very long, but  
23 before you leave, if you will let me come back and meet with  
24 you in the jury room and thank you for your service in person,  
25 I will consider it a great privilege.

1       One other thing I need to tell you about. The custom and  
2 practice in the Marshall Division of the U.S. District Court  
3 for the Eastern District of Texas has for decades been as  
4 follows in this circumstance: The lawyers in the case on both  
5 sides and all their support teams are not allowed to approach  
6 you and try to initiate a conversation with you about your  
7 service on this jury. They are prohibited from doing that by  
8 the Court. You, on the other hand, are free to talk with  
9 anyone at any time about your service in the case now that the  
10 case is over and you've been released by me as members of the  
11 jury.

12      The way this has worked for the last more than 30 years,  
13 because I've been watching it happen for more than the last 30  
14 years, is there is one way in and out of this courthouse and  
15 that is down those front steps. Don't be surprised when you  
16 go out of the building and down those front steps if you don't  
17 find lawyers from both sides of this case standing on the  
18 sidewalk near the bottom of the steps. They are hoping you  
19 will stop and initiate a conversation with them because win,  
20 lose, or draw, they want to know what you thought about what  
21 they did, how they did it, what you liked, what you didn't  
22 like. They would very much like to have your input. It's up  
23 to you whether you want to stop and talk to them or whether  
24 you want to just smile and walk right past them and go to your  
25 vehicles and go on about your way. It is totally up to you.

1 They will not obstruct your path in any way, they will not do  
2 anything to initiate a conversation with you, but they will  
3 make it easy for you if you want to initiate a conversation  
4 with them.

5 Now, to address that reality, over the last several years  
6 I've begun doing something new, and that is before the  
7 verdict's returned, I ask the trial teams from both sides of  
8 the case to give me a name and a phone number of a contact  
9 person for each side, and I have those names and numbers  
10 printed on little pieces of paper, and I'm going to put those  
11 on the table in the jury room in just a minute when I come  
12 back there to thank you for your service. If you think  
13 tomorrow, next week, next month you might want to talk to one  
14 or both sides of this case but you don't want to do it today,  
15 take one of those slips of paper and you'll have a name and  
16 phone number to call from either or both sides of the case, if  
17 you choose to do it. If you know you don't ever want to talk  
18 to any of these people, don't pick up the piece of paper and  
19 don't take it with you, but you will have that option.

20 And you're also free to stop on your way out of the  
21 building and visit in person with anybody that's there that  
22 wants to visit with you, but I'm telling you, they will be  
23 there hoping you will want to visit with them. But I don't  
24 want you to feel compelled to either do it now or never, and  
25 that's why I'll provide those names and phone numbers so that

1 you have the option of doing it at a later time if you want  
2 to. But again, you're not required in any shape, form, or  
3 fashion from communicating with anybody about this case. But  
4 by the same token, you are 100 percent free to talk with  
5 anybody of your choosing about this case and your experience.  
6 I hope that will make it easier for you.

7 With that, ladies and gentlemen, again, if you would  
8 allow me just a few minutes to thank you in person before you  
9 leave, I will meet you in the jury room.

10 Counsel, I've accepted the jury's verdict. That  
11 completes the trial of this case. Counsel, you are excused.

12 Court stands in recess.

13 (The proceedings were concluded at 1:05 p.m.)

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1 I HEREBY CERTIFY THAT THE FOREGOING IS A  
2 CORRECT TRANSCRIPT FROM THE RECORD OF  
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.  
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES  
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE  
6 COURT AND THE JUDICIAL CONFERENCE OF THE  
7 UNITED STATES.

8  
9 S/Shawn McRoberts 09/14/2023

10 \_\_\_\_\_ DATE \_\_\_\_\_  
11 SHAWN McROBERTS, RMR, CRR  
FEDERAL OFFICIAL COURT REPORTER

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